

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**MIREYA SANTOS and  
ROBERTO SANTOS**

**Plaintiffs,**

**v.**

**CITIMORTGAGE, Inc.,**

**Defendant.**

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**Civil Action No. 3:11-CV-2592-M-BK**

**ORDER ACCEPTING IN PART FINDINGS AND RECOMMENDATION OF  
THE UNITED STATES MAGISTRATE JUDGE AND GRANTING  
MOTION TO DISMISS AS TO PART OF PLAINTIFFS' CLAIM FOR  
FORFEITURE OF PRINCIPAL AND INTEREST**


The United States Magistrate Judge made Findings, Conclusions and a Recommendation in this case. Defendant filed Objections on February 21, 2012, and the District Court has made a *de novo* review of those portions of the proposed Findings, Conclusions, and Recommendation to which objection was made.

The Court notes that although Plaintiffs did not respond to the Defendant's Motion to Dismiss, filed October 7, 2011, the Court is still required to determine if Defendant's position is legally valid. In making its 'Erie guess', this Court, as did Magistrate Toliver, finds the analysis of *Smith v. JP Morgan Chase* persuasive as to the Plaintiffs' constitutional claim to invalidate the lien. However, Plaintiffs' claim to forfeit principal and interest due four years before suit was brought is barred by the residual four year statute of limitations; therefore, as to that portion of Plaintiffs' claim, Defendant's Motion to Dismiss is GRANTED.

The objections are thus overruled in part and sustained in part, and the Court otherwise ACCEPTS the Findings, Conclusions and Recommendation of the United States Magistrate

Judge. Defendant's Motion to Dismiss is GRANTED only as to Plaintiffs' claim to forfeit principal and interest accrued more than four years before suit was filed.

SO ORDERED this 29th day of March, 2012.

  
BARBARA M. G. LYNN  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF TEXAS